

March 2024

Employee Benefits Legislative and Regulatory Update

Presented by Benefit Comply

Assurex Global Partners

- C3 Risk & Insurance Services
- CCIG
- Christensen Group Insurance
- Cottingham & Butler
- Cragin & Pike, Inc.
- The Daniel & Henry Co.
- Dean & Draper Insurance Agency
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- The MJ Companies
- Oswald Companies
- Parker, Smith & Feek, Inc.
- The Partners Group
- R&R Insurance
- RCM&D
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- WA Group
- Watkins Insurance Group
- Woodruff Sawyer
- York International

Agenda

- Washington Legislative and Regulatory Update
- Upcoming Deadlines
 - 1094/1095 Reporting
 - PCORI
 - RxDC Reporting Round 3
- J&J Lawsuit and Employer Fiduciary Duty

Washington D.C. Regulatory and Legislative Update



Washington D.C. Update

■ Transparency Efforts Background



Washington D.C. Update

- New Transparency Legislation –
 - Health Care PRICE Transparency Act 2.0 (S. 3548) and Lower Costs, More Transparency Act (*H.R. 5378*)
 - Targeting hospital and provider price transparency
 - Recent report showed less than 35% of hospitals reviewed were compliant
 - Changes the attestation compliance requirements
 - Tightens requirement for machine-readable files of all rates and prices between plans and providers
 - Expand price transparency requirements to clinical diagnostic labs, imaging centers, and ambulatory surgical centers
 - Increase maximum annual penalties to \$10,000,000
 - Provide group health plans the right to access, audit, and review claims encounter data

Washington D.C. Update

- Telehealth Impact on HSA Eligibility Background
 - Under normal rules telehealth coverage provided before member incurs the minimum HDHP deductible would make individual ineligible to make HSA contributions
 - The 2023 Consolidated Appropriations Act (CAA) provided relief allowing that telehealth coverage would be temporarily disregarded for purposes of HSA eligibility for the 2023 and 2024 plan years
- Proposed Permanent Extension
 - Telehealth Expansion Act of 2023, HR 1843
 - Would permanently extend the relief to participants with telehealth benefits to remain HSA eligible
 - Passed the House Ways & Means Committee with bi-partisan support

Washington Update

- Proposed HSA Legislation

- The Bipartisan HSA Improvement Act (HR 5688)

- Would allow for participants to maintain HSA eligibility even if covered by certain benefits
 - Limited direct primary care
 - Spouse only FSA (will require that FSAs be able to differentiate spouse expenses)
 - Includes an FSA/HRA to HSA rollover provision

- The HSA Act (HR 5687)

- Allows HSA eligibility if participant has VA coverage, Medicare Part A, Native American Health coverage, bronze and catastrophic plan coverage
 - Permits HDHP to include \$500 mental health services below HDHP deductible
 - Increases maximum HSA contributions

Proposed IRS Regulations on Hospital & Indemnity Plans

- IRS, DOL, and HHS have released new proposed guidance

- Plans must pay on a "fixed period" basis

Not allowed to pay on a per service basis

Addresses plans being sold as excepted benefit indemnity plans but contain a significant list of "per service" payments making it look more like comprehensive fee-for-service health insurance.

- Tighten the no coordination rule

Cannot be offered in conjunction with another plan that makes indemnity plan payments contingent on the participant having other coverage.

Targeting "preventive only MEC + indemnity coverage" plans that are being marketed as an alternative to comprehensive group health coverage.

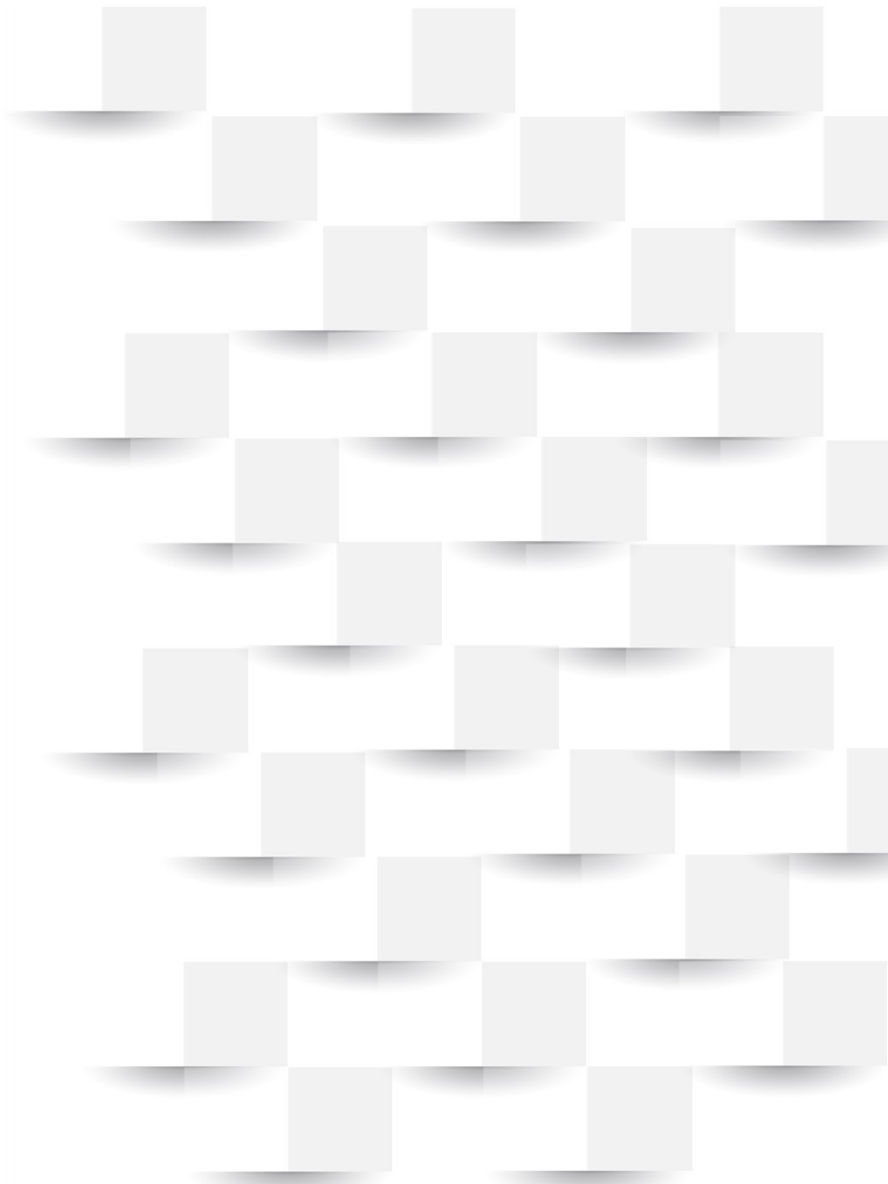
- Effective Date

- New plans offered after publication of final rules
- Existing group plans sold before publication of final rules - Plan years beginning January 1, 2027!

Proposed IRS Regulations on Hospital & Indemnity Plans

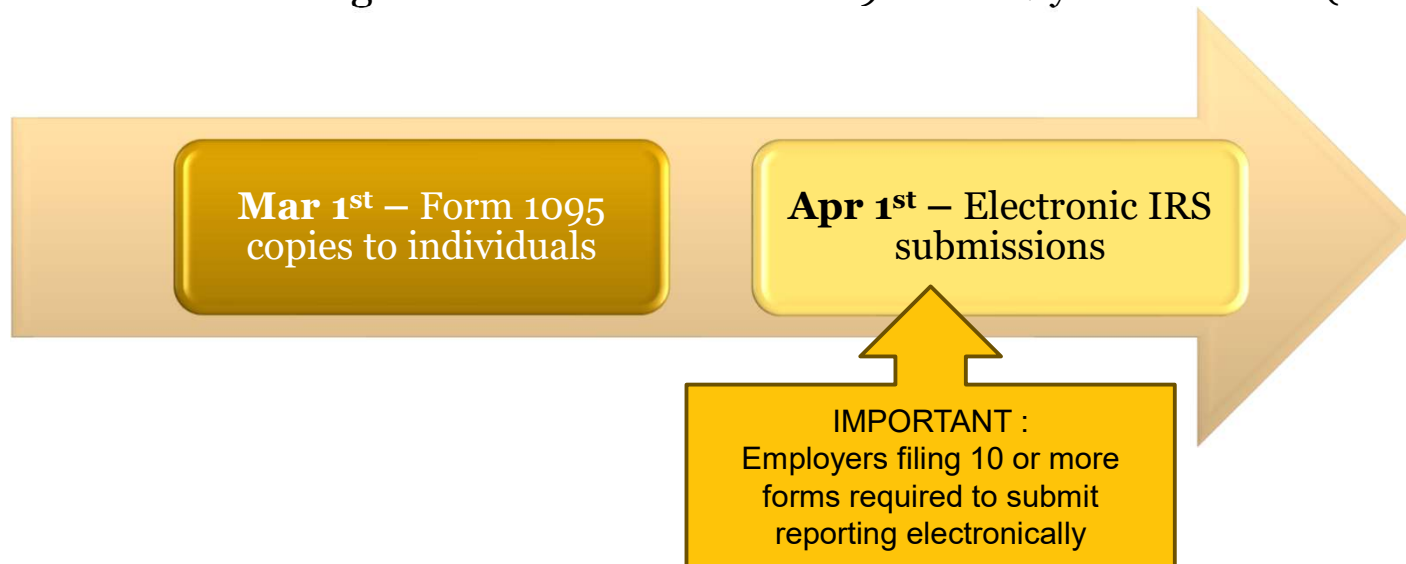
- IRS proposing to amend regulations to reflect IRS' existing interpretation of the tax treatment of hospital and fixed indemnity plans
- Benefits paid by plan must be treated as taxable compensation if:
 - Employee pays for the coverage using pre-tax deductions from pay through the employer's Section 125 plan or employer pays and does not treat payments as taxable income
 - Payments made by the fixed indemnity plan are made without regard for actual 213(d) medical expenses incurred by the employee
- Effective Date
 - Later of publication of final regulations or 01/01/24

Upcoming Deadlines

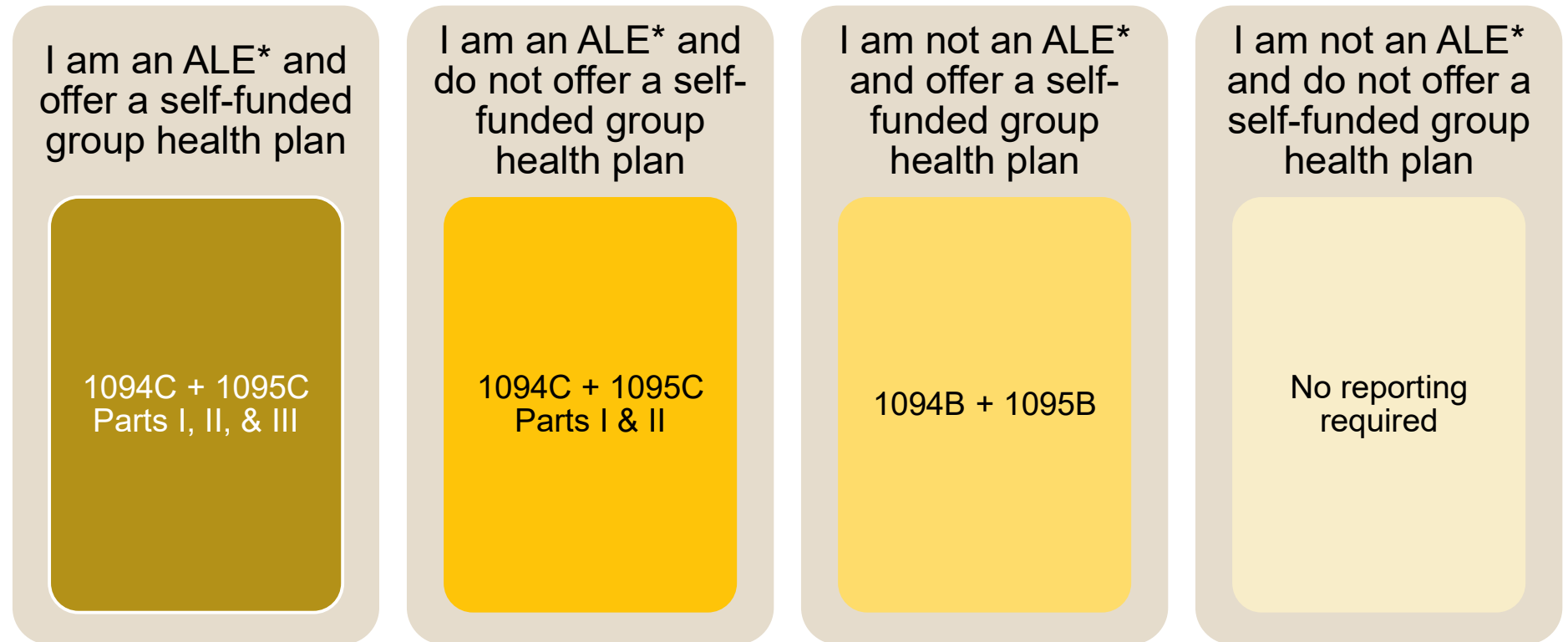


Employer 1094 / 1095 Reporting

- New Electronic Reporting Requirements for 2023
 - Employers filing 10 or more forms required to submit reporting electronically
 - Includes 1095s, 1094s, W-2s, and 1099s
- 2024 Due Dates (for 2023 Reporting)
 - 30-day extension for filing with the IRS if Form 8809 is filed by the due date (due Apr 1)



Employer 1094 / 1095 Reporting



* ALE has 50 or more Full-time Equivalent (FTE) employees. PT employees counted on a pro-rated basis

PCORI Fee Deadline

- Self-insured employer must file and pay no later than July 31, 2024
 - \$3.00 per participant for plan years that end on or after October 1, 2022, and before October 1, 2023
 - \$3.22 per participant for plan years that end on or after October 1, 2023, and before October 1, 2024
 - This includes all 1/1/23 – 12/31/23 calendar year plans
- Do not file and pay early – Wait until updated 2nd Quarter 2024 Form 720 is released
- PCORI Fee Reminders
 - Self-insured plans subject to the PCORI Fee include HRAs and Level Funded Plans
 - Even a fully-insured employer who offers an HRA must file and pay PCORI fee

Rx Reporting – Round Three!

- Round 1
 - Originally due December 27, 2022
 - Deadline extended to January 31, 2023
 - Reported 2020 & 2021 calendar years
- Round 2
 - Due before June 1, 2023
 - Reported for 2022 calendar year
- Round 3
 - Due before June 1, 2024
 - Reporting for 2023 calendar year

Rx Reporting – Round Three!

- Many employers, especially those with fully-insured plans, did not have to do anything during Round 1 – carrier /TPA / PBM handled all of the reporting for most employers...
- That was not the case in Round 2
 - Most employers had some role to play in completing Round 2 reporting – carriers and TPAs asked employers for data they did not have..
- Employers may need to be involved again in Round 3...

Rx Reporting – Round Three!

- The RxDC reporting requirements contain data elements that the carrier or TPA may not know...
 - The one creating the biggest problem is Employer/Employee Plan Contributions
 - Regulators extended temporary relief for the Dec. 27 reporting deadline so that employer/employee plan contribution reporting was optional
 - That data is supposed to be in the reporting now...Vendors who are reporting on the behalf of the employer's plan are asking for this information from employers
- What Should the Employer Do
 - Scenario 1 - Carrier or TPA required employer to report Average Monthly Premium data to them through online form, email or paper form.
 - Scenario 2 - Carrier/TPA will no longer file D1 and employer will have to submit a P2 and D1 file on their own.

Rx Reporting – Round Three!

- Will first need to register with HIOS if they have not done so already.
 - This takes time to get the account approved. It will also ask for personal information for security purposes.

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/Prescription-Drug-Data-Collection>

We do not think missing employer/employee contribution data will be an enforcement priority...

Primary Filing Resources

- [RxDC reporting instructions \(PDF\)](#)
- [RxDC templates and data dictionary \(ZIP\)](#)
- [RxDC drug name and therapeutic class crosswalk \(XLSX\)](#)
- [RxDC data validations \(XLSX\)](#)

Other Resources

- [Frequently Asked Questions \(PDF\)](#)
- [Training Resource Directory \(PDF\)](#)
- [RxDC YouTube Playlist](#)
- [Federal Regulation](#)

HIOS Manuals

- [HIOS Portal RxDC Quick Reference Guide \(PDF\)](#)
- [RxDC HIOS Module User Manual \(PDF\)](#)
- [Click here to Submit your data in the CMS Enterprise Portal](#)

The Johnson & Johnson Fiduciary Liability Case

Some J&J Case Facts that Matter

- J&J accused of significantly overpaying for prescription drugs – some of which were sold by J&J
- J&J very actively involved in the selection of specific drugs covered by the plan
- J&J holds plan assets, including employer contributions, in trust
 - Very few employers do this...

Fiduciary Responsibility 101

“Act in the Best Interest of Plan Participants”


Health and Welfare Plan Fiduciary Responsibility Basics

- ERISA §404 - Plan fiduciary must perform their duties:
 - solely in the interests of participants and beneficiaries;
 - for the exclusive purpose of providing plan benefits, or for defraying reasonable expenses of plan administration;
 - with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use...; and
 - in accordance with the documents and the instruments governing the plan...

Who is a Plan Fiduciary

- Named Fiduciaries
 - Every plan should have at least one fiduciary named in plan documents

- Functional Fiduciaries
 - Exercises any discretionary authority or discretionary control with respect to management or administration of the plan
 - Renders investment advice
 - Less important for most health and welfare plans unless a trust is involved – more applicable to retirement plans



Vendors and Service Providers can have fiduciary responsibility and liability even if they claim not to be fiduciaries!

Vendor and Service Provider Selection and Oversight

“...fiduciary status depends on whether the employer exercises discretion over the plan.”

-DOL Understanding Your Fiduciary Responsibilities Under a Group Health Plan

- Many compliance obligations cannot be handled by the employer alone...

MHPAEA

CAA

NOTL

RxDC Reporting

Machine Readable Files

No Surprises Act

DOL “*Understanding Your Fiduciary Responsibilities Under a Group Health Plan*”

<https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/understanding-your-fiduciary-responsibilities-under-a-group-health-plan.pdf>

Employer Strategies

- Follow Your Plan Documentation
- Pay Attention to How You Handle Employee Contributions
- Keep Records of Vendor Choices and Decisions
- *“Act in the Best Interest of Plan Participants”*

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